

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ROBERT G. VAN BLARCOM,)	
)	
Plaintiff)	
)	
v.)	No. 3:08-0290
)	Judge Trauger/Brown
)	
WALTER G. THOMASON and)	
FEDERAL BUREAU OF INVESTIGATION)	
Nashville, Tennessee office,)	
)	
Defendant)	

TO: THE HONORABLE ALETA A. TRAUGER

REPORT AND RECOMMENDATION

For the reasons stated below, the Magistrate Judge recommends that this matter be dismissed without prejudice for failure to pay the filing fee and to prosecute.

Background

The Plaintiff in this matter attempted to file a complaint under Title 3 of the Omnibus Crime Control and Safe Street Act of 1968, on December 4, 2008 (Docket Entry 1). The matter was referred to the undersigned for case management (Docket Entry 2).

Upon reviewing the file, it appears that the Plaintiff had not paid the \$350 filing fee, nor filed an application to proceed *in forma pauperis*. He was directed to either pay the filing fee, or to file an application to proceed *in forma pauperis* within 10 days of the entry of the order, which was entered on December 15, 2008 (Docket Entry 3). The **Clerk** was directed to send

him an application to proceed *in forma pauperis* for his convenience.

The complaint itself alleges acts that occurred in 1991. Should the Plaintiff be allowed to proceed *in forma pauperis*, the Magistrate Judge cannot conceive how this case could escape being dismissed upon a frivolity review or if the filing fee was paid, upon a motion to dismiss because of the statute of limitations. The case is, however, not ripe at this point for a decision on the statute of limitations, which is an affirmative defense inasmuch as the Plaintiff has not paid the filing fee, nor filed an application to proceed *in forma pauperis*.

Legal Discussion

The law is quite clear that before this case can proceed, the filing fee must be paid, or the Plaintiff must file an application to proceed *in forma pauperis* and that application must be granted. The Plaintiff in this case has clearly not paid the filing and, despite being given a deadline, has not filed an application to proceed *in forma pauperis*. *Harris v. Washtenaw County*, 2008 WL 2115236 (E.D. Mich. 2008).

Under these circumstances, this case should be dismissed without prejudice.

Recommendation

For the reasons stated above, the Magistrate Judge recommends that this case be dismissed without prejudice for

failing to either pay the filing fee, or to file an application to proceed *in forma pauperis* in accordance with the Court's orders. Under Rule 72(b) of the Federal rules of civil Procedure, any party has 10 days from receipt of this Report and Recommendation in which to file any written objections to this Recommendation, with the District Court. Any party opposing said objections shall have 10 days from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within 10 days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *Thomas v. Arn*, 474 U.S. 140 106 S. Ct. 466, 88 L.Ed.2d 435 (1985), *Reh'g denied*, 474 U.S. 1111 (1986).

ENTERED this 20th day of January, 2009.

/s/ Joe B. Brown
JOE B. BROWN
United States Magistrate Judge